

ESTTA Tracking number: **ESTTA595302**Filing date: **03/28/2014**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	SIDERUM S.R.L.		
Entity	limited liability company	Citizenship	Italy
Address	Via dell'Agricoltura Thiene (VI), 25 I-36016 ITALY		

Attorney information	William J. Seiter Seiter Legal Studio 2500 Broadway, Bldg F, Suite F-125 Santa Monica, CA 90404 UNITED STATES williamjseiter@seiterlegalstudio.com
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Registration Subject to Cancellation

Registration No	4073998	Registration date	12/20/2011
Registrant	Goldberg, Scott Daniel 808 Pacific Avenue Venice, CA 90291 USX		

Goods/Services Subject to Cancellation

Class 025. First Use: 2010/09/16 First Use In Commerce: 2011/04/30 All goods and services in the class are cancelled, namely: clothing, namely, [shirts, polo shirts, knit shirts, button up shirts, collardshirts, t-shirts,] pants, jeans, [shorts, sweaters, sweatshirts, sweatpants, socks, undergarments, sleepwear, pajamas, robes, caps, hats, coats, jackets, blazers, suits, kerchiefs, blouses, skirts, dresses, neckties, scarves, skirts, swimwear, bathing suits, bikinis, cover-ups, tank tops, jumpers, capris, leggings, jerseys, gloves, belts, ties, and vests; headwear, namely, caps and visors; footwear, namely, sandals, slippers, boots, and shoes]
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Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l. Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	79126374	Application Date	11/07/2012
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	ASTRONAUT
Design Mark	ASTRONAUT
Description of Mark	NONE
Goods/Services	<p>Class 009. First use: First Use: 0 First Use In Commerce: 0 Protective helmets for sports and industry protective helmets for motorcyclists; protective helmets for ski, for bicycles and for cars; spectacles; lenses for spectacles; spectacle cases; spectacle chains; spectacle frames; protective spectacles for motorcyclists; protective padded clothing for protection against bodily harm and blunt force trauma for jobs and motorcyclists</p> <p>Class 018. First use: First Use: 0 First Use In Commerce: 0 Trunks; traveling bags and umbrellas; boxes made of leather, leather trimmings for furniture, leather for furniture coverings, handbags, suitcases, clutch bags, vanity cases sold empty, purses, billfolds, wallets, briefcases, key-cases, business and credit card cases</p> <p>Class 025. First use: First Use: 0 First Use In Commerce: 0 Clothing, namely, shorts, shirts, pants, tops; coats, mantles, raincoats, dusters, fur jackets, coats, cloaks, muffs and stoles, dresses, suits, skirts, jackets, bomber jackets, overcoats, polo knit tops, polo shirts; pullovers; knitwear, namely, knit shirts, knitted caps and knitted underwear; trousers; shorts sets, bermuda shorts, jeans, bermuda jeans, waistcoats, T-shirts, vests, blouses, jerseys, sweaters, sweat shirts, sweat suits, turtleneck sweaters, blazers, cardigans, underwear, corsets, brassiere, underpants, nightgowns, pajamas, bathrobes, bathing suits, beach wraps, sun suits, sport jackets, waterproof clothing, namely, waterproof jackets and pants, wind-resistant jackets, anoraks, sleepwear, suspenders, ties, neckties, scarves, shawls, mufflers, foulards, caps, hats, hoods, gloves, sashes, belts, footwear, namely, beach footwear, sports shoes, boots, shoes and slippers; sandals and beach shoes; clothing of leather, namely, pants, coats, skirts, trousers, jackets, coats; fur-lined coats; dressing gowns; caps being headwear; cap peaks; ear muffs being clothing; cyclists' clothing, namely, shorts and jerseys; leggings</p>

Attachments	79126374#TMSN.jpeg(bytes) Petition to Cancel (US TM Reg No 4073998).pdf(164602 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/wjs/
Name	William J. Seiter
Date	03/28/2014

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark

Registration No.: 4073998

For the mark: ASTRONAUTS AND INDIANS

Date registered: December 20, 2011

SIDERUM S.R.L.)	
)	
Petitioner,)	
)	
v.)	Cancellation No. _____
)	
Scott Daniel Goldberg)	
)	
Registrant.)	

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PETITION TO CANCEL

Petitioner:

SIDERUM S.R.L. (an Italian limited liability company)
Via dell'Agricoltura
25 I-36016 Thiene (VI)
Italy

To the best of petitioner's knowledge, the name and address of the current owner of the registration is:

Scott Daniel Goldberg
808 Pacific Avenue
Venice, CA 90291

Petitioner believes that it will be damaged by the registration, and hereby petitions to cancel the same as to all goods in International Class 25 listed in the registration.

The grounds for the cancellation are as follows:

1. Petitioner is the owner of the trademark ASTRONAUT, under U.S. Trademark Application Serial No. 79126374, filed on November 7, 2012, with a priority date of September 14, 2012, in International Class 9 for “Protective helmets for sports and industry protective helmets for motorcyclists; protective helmets for ski, for bicycles and for cars; spectacles; lenses for spectacles; spectacle cases; spectacle chains; spectacle frames; protective spectacles for motorcyclists; protective padded clothing for protection against bodily harm and blunt force trauma for jobs and motorcyclists; International Class 18 for “Trunks; traveling bags and umbrellas; boxes made of leather, leather trimmings for furniture, leather for furniture coverings, handbags, suitcases, clutch bags, vanity cases sold empty, purses, billfolds, wallets, briefcases, key-cases, business and credit card cases; and International Class 25 for “Clothing, namely, shorts, shirts, pants, tops; coats, mantles, raincoats, dusters, fur jackets, coats, cloaks, muffs and stoles, dresses, suits, skirts, jackets, bomber jackets, overcoats, polo knit tops, polo shirts; pullovers; knitwear, namely, knit shirts, knitted caps and knitted underwear; trousers; shorts sets, bermuda shorts, jeans, bermuda jeans, waistcoats, T-shirts, vests, blouses, jerseys, sweaters, sweat shirts, sweat suits, turtleneck sweaters, blazers, cardigans, underwear, corsets, brassiere, underpants, nightgowns, pajamas, bathrobes, bathing suits, beach wraps, sun suits, sport jackets, waterproof clothing, namely, waterproof jackets and pants, wind-resistant jackets, anoraks, sleepwear, suspenders, ties, neckties, scarves, shawls, mufflers, foulards, caps, hats, hoods, gloves, sashes, belts, footwear, namely, beach footwear, sports shoes, boots, shoes and slippers; sandals and beach shoes; clothing of leather, namely, pants, coats, skirts, trousers, jackets, coats; fur-lined coats; dressing gowns; caps being headwear; cap peaks; ear muffs being clothing; cyclists’ clothing, namely, shorts and jerseys; leggings,” based on Section 66(a) of the Trademark Act, 15 U.S.C. Section 1141f(a), requesting extension of protection to the United States of International Registration No. 1150553.

2. Petitioner's mark ASTRONAUT has been promoted extensively, and the mark is well known to the consuming public. Petitioner has invested substantial time, effort and money in promoting the mark. As a result, the mark has become distinctive of Petitioner's goods, and has come to represent substantial goodwill for Petitioner, widely recognized by the consuming public as a designation of source of the goods of Petitioner.

3. On May 10, 2011, Registrant filed Application Serial No. 85317585 for the mark ASTRONAUTS AND INDIANS in International Class 25 for "clothing, namely, shirts, polo shirts, knit shirts, button up shirts, collard shirts, t-shirts, pants, jeans, shorts, sweaters, sweatshirts, sweatpants, socks, undergarments, sleepwear, pajamas, robes, caps, hats, coats, jackets, blazers, suits, kerchiefs, blouses, skirts, dresses, neckties, scarves, skirts, swimwear, bathing suits, bikinis, cover-ups, tank tops, jumpers, capris, leggings, jerseys, gloves, belts, ties, and vests; headwear, namely, caps and visors; footwear, namely, sandals, slippers, boots, and shoes," based on use in commerce under Section 1(a) of the Trademark Act, 15 U.S.C. Section 1051(a), declaring that the mark was first used at least as early as September 16, 2010, and first used in United States commerce at least as early as April 30, 2011, and that the mark was in such use on the filing date of the application. Said application registered for the aforementioned goods under U.S. Trademark Registration No. 4073998 on December 20, 2011.

5. Upon information and belief, Petitioner alleges that Registrant had made no bona fide use of the aforementioned mark in U.S. commerce on or in connection with any goods in International Class 25 on or before April 30, 2011, the claimed date of first use and date of first use in U.S. commerce.

6. Upon information and belief, Petitioner alleges that Registrant's declaration that the aforementioned mark was in use in U.S. commerce on or in connection with the applied for

goods on April 30, 2011 and on the application filing date constituted a false, material misrepresentation of fact, which Registrant knew to be false. Accordingly, U.S. Trademark Registration No. 4073998 was obtained through fraud.

7. Upon information and belief, Petitioner alleges that Registrant has made no bona fide use of the aforementioned mark in U.S. commerce at any time on or in connection with any goods in International Class 25.

8. Upon information and belief, Petitioner alleges that Registrant has made no bona fide use of the aforementioned mark in U.S. commerce at any time on or in connection with any goods in International Class 25 in United States commerce on or before September 14, 2012, the priority date of Petitioner's aforementioned Application Serial No. 79126374.

9. Upon information and belief, Petitioner alleges that Registrant has ceased use in commerce of the mark in U.S. Registration No. 4073998 on or in connection with the goods registered thereunder, without a bona fide intent to resume use, and that accordingly, Registrant has abandoned use of the mark in Registration No. 4073998 such that the registration should be cancelled in accordance with Trademark Act Section 14(3), 15 U.S.C. §1064(3).

10. The mark that Registrant has registered is similar in appearance, sound and commercial impression to Petitioner's mark, and could be used in connection with goods identical to and/or closely related to the goods offered by Petitioner and in connection with which Petitioner uses or intends to use its mark. Based on the similarity of the two marks and the sameness, similarity and relatedness of the parties' respective goods, the public is likely to associate the goods of Registrant under the mark ASTRONAUTS AND INDIANS with Petitioner and/or its licensees or with Petitioner's and/or its licensees' goods, or to believe that Registrant's goods are

sponsored, endorsed or licensed by Petitioner or its licensees, or that there exists some relationship between Registrant and Petitioner and/or its licensees.

11. For the above reasons, any use of the mark ASTRONAUTS AND INDIANS by Registrant for goods in International Class 25 is likely to cause confusion, cause mistake or deceive the public, and cause the public to believe that the goods offered under the mark by Registrant emanate from or are otherwise sponsored or endorsed by Petitioner, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

12. Petitioner will be irreparably harmed and financially damaged by the registration of Registrant's mark, because although Petitioner is entitled to priority by virtue of its priority date of September 14, 2012, under Application Serial No. 79126374, Registrant's mark has been cited against Petitioner's pending Application Serial No. 79126374 as grounds for refusal in an Office Action issued October 3, 2013. Therefore, Registrant's mark should be cancelled.

Request For Relief

13. Petitioner is the owner of U.S. Trademark Application Serial No. 79126374, filed on November 7, 2012, with a priority date of September 14, 2012, for the aforementioned goods.

14. Petitioner will be irreparably harmed and financially damaged by Registrant's Trademark Registration No. 4073998, because Registrant's mark has been cited against Petitioner's pending Application Serial No. 79126374, as a ground for refusal, under an Office Action issued October 3, 2013.

15. Therefore, the registration should be cancelled as to all goods listed therein.

16. For the foregoing reasons, Petitioner requests cancellation of Trademark Registration No. 4073998.

DATED: March 28, 2014

Respectfully submitted,
SEITER LEGAL STUDIO

By: /s/ William J. Seiter
William J. Seiter
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Santa Monica, California 90404
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email: williamjseiter@seiterlegalstudio.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition to Cancel has been forwarded via First Class Mail, postage prepaid, to Registrant to its address of record, as follows:

Scott Daniel Goldberg
808 Pacific Avenue
Venice, CA 90291

on this 28th day of March, 2014.

/s/
William J. Seiter